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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 EZScreenPrint LLC,
10 Plaintiff,

11 v.

12 SmallDog Prints LLC, et al.,
13 Defendants.
14

No. CV-17-03605-PHX-GMS

ORDER

15 Pending before the Court is the Motion to Dismiss of Defendant SmallDog Prints
16 LLC (Doc. 18) and the Motion to Amend of Plaintiff EZScreenPrint LLC (Doc. 20). For
17 the following reasons, the Court grants the Motion to Dismiss and denies the Motion to
18 Amend.

19 **BACKGROUND**

20 Plaintiff EZScreenPrint is an Arizona limited liability company which sells
21 supplies for screen printing on shirts and other materials. (Doc. 1, ¶ 2). Plaintiff operates
22 a website, ezscreenprint.com. *Id.* Plaintiff has trademarked the names “ezscreen” and
23 “ezscreenprint”. *Id.* at ¶ 10. Defendant SmallDog Prints also sells screen printing
24 supplies, and is a Missouri limited liability company. *Id.* at ¶ 3. Defendant Trish
25 Bordeaux is the owner of SmallDog Prints and resides in Missouri. *Id.* at ¶ 4. Defendants
26 primarily conduct their business through a website, smalldogprints.com. *Id.* Plaintiff
27 alleges that Defendants have used the phrase “EZ Screen Printing” in multiple areas of
28 their webpage and advertising. *Id.* at ¶¶ 14–20. Plaintiff asserts that this is a violation of

1 its trademarks. Defendants have moved to dismiss for lack of personal jurisdiction.

2 DISCUSSION

3 I. Legal Standard

4 The party “seeking to invoke the court’s jurisdiction bears the burden of
5 establishing that jurisdiction exists.” *Scott v. Breeland*, 792 F.2d 925, 927 (9th Cir. 1986).
6 Once a defendant moves to dismiss for lack of personal jurisdiction, the plaintiff is
7 “obligated to come forward with facts, by affidavit or otherwise, supporting personal
8 jurisdiction.” *Amba Mktg. Sys., Inc. v. Jobar Int’l, Inc.*, 551 F.2d 784, 787 (9th Cir.
9 1977). The plaintiff must show that the exercise of jurisdiction comports with the state
10 long-arm statute and the principles of due process. *Omeluk v. Langsten Slip & Batbyggeri*
11 *A/S*, 52 F.3d 267, 269 (9th Cir. 1995). Arizona’s long-arm statute confers jurisdiction to
12 the maximum extent allowed by the Due Process Clause of the United States
13 Constitution. Ariz. R. Civ. P. 4.2(a); *Doe v. American Nat’l Red Cross*, 112 F.3d 1048,
14 1050 (9th Cir. 1997). Due process requires a nonresident defendant to have “certain
15 minimum contacts with [the forum state] such that the maintenance of the suit does not
16 offend traditional notions of fair play and substantial justice.” *Int’l Shoe Co. v.*
17 *Washington*, 326 U.S. 310, 316 (1945) (internal citation omitted). There are two types of
18 personal jurisdiction: general and specific. A court may assert general personal
19 jurisdiction over a defendant when the defendant’s “affiliations with the State in which
20 suit is brought are so constant and pervasive ‘as to render [it] essentially at home in the
21 forum State.’” *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (quoting *Goodyear*
22 *Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919 (2011)). By contrast, specific
23 personal jurisdiction exists where “the defendant has ‘purposefully directed’ his activities
24 at residents of the forum . . . and the litigation results from alleged injuries that ‘arise out
25 of or relate to’ those activities. *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 473
26 (1985) (internal citations omitted).

27 II. Analysis

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1 **A. Original Complaint**

2 Plaintiff’s original complaint relies on specific jurisdiction. Specific jurisdiction is
3 analyzed under a three-pronged test: “(1) [t]he non-resident defendant must *purposefully*
4 *direct his activities* or consummate some transaction with the forum or resident thereof;
5 *or* perform some act by which he *purposefully avails himself* of the privilege of
6 conducting activities in the forum, thereby invoking the benefits and protections of its
7 laws; (2) the claim must be one which arises out of or relates to the defendant’s forum-
8 related activities; and (3) the exercise of jurisdiction must comport with fair play and
9 substantial justice, i.e. it must be reasonable.” *Mavrix Photo, Inc. v. Brand Tech, Inc.*, 647
10 F.3d 1218, 1227–28 (9th Cir. 2011) (emphasis in original). The concept of “purposeful
11 direction” is applied in non-contract suits, which is the case with this trademark
12 infringement claim. *Id.* at 1228. The Ninth Circuit uses a three-element test to consider
13 purposeful direction and this “effects” test. The defendant must have “(1) committed an
14 intentional act, (2) expressly aimed at the forum state, (3) causing harm that the defendant
15 knows is likely to be suffered in the forum state.” *Dole Foods Co. v. Watts*, 303 F.3d
16 1104, 1111 (9th Cir. 2002). An act is “expressly aimed” at the forum state “when the
17 defendant is alleged to have engaged in wrongful conduct targeted at a plaintiff whom the
18 defendant knows to be a resident of the forum state.” *Pebble Beach Co. v. Caddy*, 453
19 F.3d 1151, 1156 (9th Cir. 2006). Plaintiff bears the burden of satisfying the first two
20 prongs, and if Plaintiff does so, Defendants must “set forth a ‘compelling case’ that the
21 exercise of jurisdiction would not be reasonable.” *Mavrix*, 647 F.3d at 1228 (quoting
22 *Burger King*, 471 U.S. at 476–78).

23 Although Plaintiff sufficiently alleges that Defendants committed an intentional
24 act, by allegedly intentionally infringing on Plaintiff’s trademarks, Plaintiff has not
25 sufficiently demonstrated that Defendants expressly aimed these actions at Arizona or
26 that Defendants knew this harm was likely to be suffered in Arizona. When a defendant
27 operates an “essentially passive website” and has “done nothing to encourage residents of
28 the forum state to access its site,” those acts are insufficient to confer jurisdiction over an

1 out-of-state defendant. *Rio Properties, Inc. v. Rio Intern. Interlink*, 284 F.3d 1007, 1020
2 (9th Cir. 2002) (citing *Cybersell, Inc. v. Cybersell, Inc.*, 130 F.3d 414, 418–20 (9th Cir.
3 1997). Rather, “‘something more’ [is] required to indicate that the defendant purposefully
4 directed its activity in a substantial way to the forum state.” *Rio Properties*, 284 F.3d at
5 1020 (citing *Cybersell*, 130 F.3d at 418). The Ninth Circuit has found that “something
6 more” existed where a defendant sent a letter demanding money in exchange for return of
7 a hacked domain name, evincing knowledge of the plaintiff’s place of business and
8 targeting the forum. *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1319–20 (9th Cir.
9 1998). Similarly, “something more” existed when a defendant was alleged to have run
10 radio and print advertisements for its website in the forum state, again evincing
11 knowledge of the plaintiff’s place of business and targeting the forum state. *Rio*
12 *Properties*, 284 F.3d at 1020–21.

13 Even where, as here, Defendants are alleged to operate an interactive website,
14 Plaintiff must still establish that Defendants took actions “expressly aimed” at Arizona.
15 When a website is interactive, courts “have looked to the ‘level of interactivity and
16 commercial nature of the exchange of information that occurs on the Web site’ to
17 determine if sufficient contacts exist to warrant the exercise of jurisdiction.” *Cybersell*,
18 130 F.3d at 418 (quoting *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119, 1124
19 (W.D. Pa. 1997). But, Plaintiff has provided no specific allegations about the interactivity
20 of Defendants’ website with residents of the state of Arizona. Plaintiff has no made no
21 allegations that that Defendants do business with Arizona residents, other than to say that
22 Defendants are “doing business in the State of Arizona . . . conducted by means of a
23 website.” (Doc. 1, ¶ 2). This general allegation, without any specific evidence that
24 Defendants have done business with Arizona residents, is insufficient. Plaintiff has also
25 not alleged that Defendants targeted customers in Arizona by buying advertisements in
26 Arizona or contacting potential customers in Arizona. *See Adidas America, Inc. v.*
27 *Cougar Sport, Inc.*, 169 F.Supp.3d 1079, 1089 (D. Or. 2016) (finding that the defendant’s
28 interactive website, “by itself, is insufficient to satisfy the express aiming requirement of

1 the effects test” where plaintiff had not presented any evidence that defendant had contact
2 with forum state residents through its website). Moreover, Plaintiff has not alleged that
3 Defendants knew Plaintiff was a resident of Arizona. Defendants could not know that the
4 harm they allegedly caused was likely to be suffered in Arizona if they did not know
5 Plaintiff was a resident of Arizona. Because the Court finds that Plaintiff has not shown
6 that Defendants’ expressly aimed conduct at the state of Arizona, the Court need not
7 address the remaining factors. Plaintiff’s Complaint, as originally written, does not
8 establish personal jurisdiction over the Defendants.

9 **B. Proposed Amended Complaint**

10 **1. Motion to Amend**

11 Courts are to “freely give leave to amend when justice so requires.” Fed. R. Civ. P.
12 15(a)(2). Motions to amend may be denied where there has been “undue delay, bad faith
13 or dilatory motive on the party of the movant, . . . [or] futility of amendment.” *Foman v.*
14 *Davis*, 371 U.S. 178, 182(1962). Plaintiff moves to amend the Complaint to add more
15 factual allegations which Plaintiff asserts support the Court having personal jurisdiction
16 over Defendants. Specifically, the proposed amended complaint states that Defendants’
17 website is hosted and registered in Arizona and by Arizona companies, Defendants
18 purposefully communicated with customers of Plaintiff, and Defendants have
19 constructive knowledge that Plaintiff is an Arizona company. (Doc. 20, Ex. A, ¶¶ 8, 13,
20 26). As discussed below, the fact that Defendants’ website is registered by an Arizona
21 company and is hosted by an Arizona company is not sufficient to create personal
22 jurisdiction. Plaintiffs have not shown that they have any additional facts that could
23 support personal jurisdiction. Because amendment would be futile, the Court denies the
24 Motion to Amend.

25 **2. General Personal Jurisdiction**

26 In its proposed amended complaint (Doc. 20), Plaintiff alleges the domain name
27 smalldogprints.com is registered with GoDaddy, an Arizona company. *Id.* at ¶ 13.
28 Plaintiff also alleges that Defendants used a proxy company, Domains by Proxy, also an

1 Arizona company and wholly owned by GoDaddy, to register the domain name. *Id.*
2 Because these allegations do not relate to the specific injuries at issue in this suit, the
3 proposed amendments serve as an attempt to argue that Defendants are subject to general
4 jurisdiction in the state of Arizona. A defendant “whose contacts with a state are
5 ‘substantial’ or ‘continuous and systematic’ can be haled into court in that state in any
6 action, even if the action is unrelated to those contact.” *Bancroft & Masters, Inc. v.*
7 *Augusta Nat’l Inc.*, 223 F.3d 1082, 1086 (9th Cir. 2000) (quoting *Helicopteros*
8 *Nacionales de Colombia, S.A. v. Hall*, 466 U.S. 408, 415 (1984). The defendants’
9 contacts with the forum state must “be of the sort that approximate physical presence.”
10 *Bancroft & Masters*, 223 F.3d at 1086. The Court finds that Defendants’ use of a domain
11 proxy registrant based in Arizona and a domain name registered with an Arizona
12 company are insufficient contacts with the state of Arizona and do not give the Court
13 personal jurisdiction over Defendants. The registration of a domain name “create[s] no
14 ongoing relationship of substance” between the domain registrar (GoDaddy) and the
15 purchaser (SmallDogPrints). *America Online, Inc. v. Huang*, 106 F.Supp.2d 848, 857
16 (E.D. Va. 2000). The domain registrar merely maintains a database entry on
17 SmallDogPrint’s behalf, and it generally does not store content, provide technical
18 support, or provide a portal to the webpage. *Id.* A domain name registration is “a
19 relatively minor portion of the Internet’s architecture, [] a minuscule presence in this
20 [forum state,] [and] it is merely a reference point in a computer database.” *Id.* at 858
21 (citations and quotations omitted). In the context of general personal jurisdiction, the
22 Court “examines a corporation’s activities worldwide—not just the extent of its contacts
23 in the forum state—to determine where it can rightly be considered at home.” *Ranza v.*
24 *Nike, Inc.*, 793 F.3d 1059, 1070 (9th Cir. 2015). Therefore, it is not enough that
25 Defendants have registered their domain name through an Arizona company. *See Blocker*
26 *v. Bandmine.com*, No. 16cv1709-AC, 2017 WL 4287215, at *7 (D. Or. 2017). Defendant
27 SmallDog Prints is incorporated in the state of Missouri and Defendant Bourdeaux lives
28 in the state of Missouri and operates SmallDog Prints from the state of Missouri. In

1 contrast with Defendants' extensive contacts in Missouri, their limited activities with
2 Arizona do not render it "essentially at home" there.

3 Moreover, the Court is cognizant of the fact that Defendants' domain name is
4 registered with GoDaddy, an Arizona corporation. GoDaddy is apparently the largest
5 domain registrar in the world and maintains over 50 million domain names worldwide, as
6 of 2013. *Petroliaam Nasional Berhad v. GoDaddy.com, Inc.*, 737 F.3d 546, 548 (9th Cir.
7 2013). The argument Plaintiff advances could allow millions of companies with domain
8 names registered through GoDaddy to be subject to general personal jurisdiction in the
9 state of Arizona. Plaintiff asserts that this would not be the case, because Defendants
10 have additional contacts with the State of Arizona due to their alleged targeted trademark
11 infringement against an Arizona corporation. But this argument collapses the distinction
12 between general and specific jurisdiction. Defendants' domain name registration is not
13 related to the specific injuries of trademark infringement alleged by Plaintiff. Therefore,
14 Plaintiff cannot argue that Defendants' domain name registration is related to specific
15 personal jurisdiction; it must be related to general personal jurisdiction. Defendants'
16 alleged additional contacts stemming from the specific dispute in this case are not
17 relevant to the question of general personal jurisdiction. Because the act of creating a
18 domain name is fast, the vast extent of Defendants' activities worldwide are not in
19 Arizona, and Plaintiff's argument could be disruptive and create absurd results, the Court
20 finds that Defendants are not subject to general personal jurisdiction in Arizona.

21 **3. Specific Personal Jurisdiction**

22 Plaintiff's proposed amended complaint also attempts to bolster the claims
23 regarding specific jurisdiction. To meet the requirement of the effects test that the
24 Defendants must be causing harm knowing it is likely to be suffered in Arizona, Plaintiff
25 adds the allegation that Defendants "had constructive knowledge that EZScreenPrint LC
26 is an[] Arizona LLC based on the publicly available LLC registration with the Arizona
27 Corporation Commission." (Doc. 20, ¶ 26). But Plaintiff's briefing contains no support
28 for the proposition that constructive knowledge is sufficient. *See Rhapsody Int'l Inc. v.*

1 *Lester*, No. 13-cv-05486-CRB, 2014 WL 709899, at* 7 (N.D. Cal. 2014) (finding that
2 defendants had notice of plaintiff's presence in the forum state of California after
3 plaintiff's counsel wrote to defendants and informed them of plaintiff's presence in
4 California). This is particularly true, given that the idea of "constructive knowledge"
5 seems to fly in the face of the requirement of *express* aiming. The *Pebble Beach* court did
6 not discuss constructive knowledge when holding that for an act to be expressly aimed it
7 must be targeted at a plaintiff whom the defendant *knows* to be a resident of the forum
8 state.

9 CONCLUSION

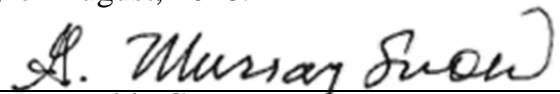
10 Plaintiff bears the burden of proving that Defendants purposefully directed
11 activities at the forum state. Under the effects test, to have purposeful direction, Plaintiff
12 must show that Defendants expressly aimed conduct at the forum state, knew that
13 Plaintiff was a resident of the forum state, and caused foreseeable harm in the forum
14 state. Plaintiff has not alleged that Defendants expressly aimed their conduct at the state
15 of Arizona or that they knew Plaintiff was a resident of the state of Arizona. Plaintiff's
16 proposed amendments to the Complaint would not cure any of the deficiencies discussed
17 here. Therefore, the Court finds that amendment would be futile and denies the motion.

18 **IT IS THEREFORE ORDERED** that the Motion to Dismiss of Defendants
19 SmallDog Prints and Trish Bourdeaux (Doc. 18) is **GRANTED**.

20 **IT IS FURTHER ORDERED** that the Motion to Amend of Plaintiff
21 EZScreenPrints (Doc. 20) is **DENIED**.

22 **IT IS FURTHER ORDERED** directing the Clerk of Court to enter judgment
23 accordingly.

24 Dated this 6th day of August, 2018.

25 
26 Honorable G. Murray Snow
27 United States District Judge
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